

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 308 of 1996

to

CRIMINAL REVISION APPLICATION NO.311 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

Versus

KANAIYALAL MANILAL

Appearance:

MR KP RAVAL, ADDL PUBLIC PROSECUTOR for Petitioners

MR MM TIRMIZI, Amicus Curiae

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 29/01/97

ORAL COMMON JUDGEMENT

1. This group of Criminal Revision Application has been directed against the order dated 22/04/1996 passed by the learned Additional Sessions Judge, Court No.12, Ahmedabad.

2. The learned Matropolitan Magistrate, Ahmedabad,

in exercise of powers under section 20 of the Mental Health Act, 1987 (hereinafter referred to as 'the Act, 1987'), while passing the order of reception to Mental Hospital Ahmedabad of Mentally ill persons in Lunatic Case No.19/95, 29/95, 4/95 and 18/94, directed the applicants to deposit the amount of maintenance at the rate of Rs. 350, Rs 400/-, Rs 300/-, Rs 400 per month respectively in each case. It may be stated that the provisions of the Act were invoked by the learned Magistrate on recording the evidence of the concerned applicants and the witnesses. It appears that the order of giving directions to make the payment personally were challenged by the individual applicants by way of filing Revision before the Sessions Judge, Ahmedabad. The learned Additional Sessions Judge, by his order dated 22/4/1996, relying on a resolution of the State Government dated 21st July 1984, directed that, as the applicants have a very meagre source of income and they are not in a position to deposit the amount, the expenses shall be born by the State Government.

3. The State has challenged the said order of the learned Additional Sessions Judge by way of filing this group of Revision Applications. Instead of issuing the notices to the individual nonapplicants, I requested Mr.M.M.Tirmizi, learned Advocate to assist the Court as an Amicus Curiae.

4. I have heard Mr. K.P.Raval, learned APP and Mr.M.M.Tirmizi, learned counsel. The Mental Health Act, 1987 has been enacted to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto. By virtue of section-98, the Indian Lunacy Act, 1977 has been repealed. Though the Act was enacted in the year 1987, it came into force w.e.f. 01/04/1993. Chapter III of the Act provides for psychiatric hospital or a psychiatric nursing home. Section-5 of the Act provides that the Central Government may in any part of India or the State Government, within the limits of its jurisdiction, establish or maintain psychiatric hospital or psychiatric nursing home for the admission, treatment and care of mentally ill persons at such places, as it thinks fit and separate psychiatric hospital and psychiatric nursing home may be established and maintained. Chapter III provides for admission and detention in psychiatric hospital and psychiatric nursing homes. Part-I provides with the admission on voluntary basis. Part-II deals with admission under special circumstances and Part-III provides for reception orders.

Section-22 provides procedure of the application u/s 22 of the Act. It provides that, on receiving application u/s 20 of the Act, the Magistrate shall hold an inquiry with respect to the suffering from mental disorder. For the convenience, section-22 is reproduced below :

Section-22 :

Procedure upon application for reception order:-

(1) On receipt of an application under sub-section (2) of section 20, the Magistrate may make a reception order, if he is satisfied that:-

(i) the mentally ill person is suffering from mental disorder of such a nature and degree that it is necessary to detain him in a psychiatric hospital or psychiatric nursing home for treatment, or;

(ii) it is necessary in the interest of the health and personal safety of the mentally ill person or for the protection of others that he should be so detained, and a temporary treatment order would not be adequate in the circumstances of the case and it is necessary to make a reception order.

(2)

(3)

(4)

(8)

5. Sub-clause (7) of section-22 provides as under:

The alleged mentally ill person, in relation of whom the application is made is so mentally ill that in the interest of health and personal safety of that person or for the protection of others, it is necessary to detain him in a psychiatric hospital or psychiatric nursing home for treatment, he may pass a reception order for that purpose and if he is not

so satisfied, he shall dismiss the application and any such order may provide for the payment of the costs of the inquiry by the applicant personally or from out of the estate of the mentally ill person, as the Magistrate deem appropriate.

Section - 78 :

78. Cost of maintenance to be borne by Government in certain cases :

The cost of maintenance of a mentally ill persons detained as an inpatient in any psychiatric hospital or psychiatric nursing home shall, unless otherwise provided for by any law for the time being in force, be born by the Government of the State wherein the authority which passes the order in relation to the mentally ill person is subordinate, if-

- (a) that the authority which have made the order has not taken an undertaking from any person to bear the cost of maintenance of such mentally ill person, and
- (b) no provision for bearing the cost of maintenance of such a District Court under this Chapter.

6. A reading of the Scheme of the Act clearly shows that when the Magistrate is satisfied that a person is mentally ill and in the interest of health and personal safety of that person, the protection is required and for that, it is necessary to detain him in psychiatric hospital or psychiatric nursing home, je shall pass an order of reception. The cost of the maintenance is to be borne by the state Government, in circumstances set out in section 78 of the Act.

7. In the instant case, it appears that the attention of neither the learned Magistrate nor the learned Additional Sessions Judge, was invited to the

provisions of section 78 of the Act. The provision of the Act particularly section 78 must be construed liberally. Except where the case fall under section 79 or 80, as a general rule, it is the duty of the State to born the cost of the maintenance of mentally ill persons. It must be clearly understood that in a welfare state, it is not merely a matter of grace, but it is a statutory obligation of the State Government to bear the cost of mentally ill persons, covered u/s 78 of the act.

8. A technical plea has been raised, though not seriously pressed, that the Revision Application before the learned Sessions Judge was not maintainable, in view of the remedy of appeal available u/s 49 of the Act, 1987. It is true that under the provisions of section 49 of the Act, the order of learned Magistrate passed u/s 22 can only be challenged by way of appeal. However, such a plea cannot come in way of doing substantial justice. This Court has an inherent powers u/s 487 to treat the revisions filed before the learned Sessions Judge as appeals and I direct to do so.

9. In view of the aforesaid, I upheld the impugned orders of the Additional Sessions Judge, Ahmedabad, though for different reasons. This group of revision application is accordingly rejected. Rule discharged.

parmar*